

[WELCOME TO NEW YORK!](#)

The NEW YORK HUMAN RIGHTS LAW (“NYHRL”) (<http://www.nysdhr.com/hrlaw.html>) prohibits discrimination in employment on the basis of sex. Women can bring the following claims under the NYHRL (<http://www.nysdhr.com/hrlaw.html>) including but not limited to:

- (1) Unequal Pay
- (2) Disparate Impact
- (3) Disparate Treatment
- (4) Sexual Harassment
- (5) Pregnancy Discrimination
- (6) Failure to Hire
- (7) Wrongful Denial of Promotion
- (8) Wrongful Termination
- (9) Retaliation

Continue to learn more information about your rights!!!

[HAVE I BEEN DISCRIMINATED AGAINST? TAKE THE QUIZ!](#)

What does the law say?	What can I do about sex discrimination?
Resources and Statistics	Real Life Stories

WHAT DOES THE NEW YORK LAW SAY?

[What does the law say?](#)

[What types of discrimination does the law cover?](#)

[How do I file a claim?](#)

[What can I get if I win?](#)

[What if I don't want to sue?](#)
(Link to IDEAS FOR CHANGE)

WHAT DOES THE LAW SAY?

- a. [Where is the law regarding sex discrimination in employment in New York found?](#)
- b. [To whom does the New York Human Rights Law apply?](#)
- c. [Under the New York Human Rights Law, what is illegal?](#)
- d. [What is sex discrimination?](#)
- e. [What constitutes sex or gender discrimination under the New York Human Rights Law?](#)
- f. [What is an “employee” under this law?](#)
- g. [What is an “employer” this law?](#)
- h. [Are women a “protected class”?](#)
- i. [Is there a federal law about sex discrimination?](#)
- j. [How does the state law compare with federal in terms of coverage?](#)
- k. [Is it ever okay for my employer to treat or impact women differently because of their sex?](#)
- l. [In a nutshell, what must I prove to win my case?](#)
- m. [What could my employer do to deny my allegations, and how do I respond to its denials?](#)
- n. [Does it matter when the discrimination occurred?](#)
- o. [What if my employer has fewer than 4 employees?](#)
- p. [Who enforces the law?](#)
- q. [How do I file a claim of sex discrimination with the New York State Division of Human Rights?](#)
- r. [If I prove my sex discrimination claim, what kind of remedies am I entitled to?](#)

[Back to Main](#)

- a. Where is the law regarding sex discrimination in employment in New York found?**
The law that protects you from sex discrimination can be found on the New York Division of Human Rights website: www.nysdhr.com. The law is called the “Human Rights Law” and is found under Article 15 of the New York State Constitution. It is also referred to as New York Executive Law Section 296 or McKinney’s Executive Law Section 296.

[Back to top](#)

- b. To whom does the New York Human Rights Law apply?**
The New York Human Rights Law (<http://www.nysdhr.com/hrlaw.html>) covers employers with more than 4 employees. It does not protect individuals employed by their parents, spouse or children, nor does it protect domestic servants or individual contractors.¹

[Back to top](#)

- c. Under the New York Human Rights Law, what is illegal?**

It is illegal for an employer to refuse to hire or employ, to bar or to discharge from employment, or to discriminate against an individual in compensation or in terms, conditions or privileges of employment on the basis of sex.²

[Back to top](#)

d. What is sex discrimination?

Sex discrimination is the less favorable treatment of women in the workplace simply because they are females. Adverse employment actions, such as termination and failure to promote based on sex, are also considered to be sex discrimination. Black's Law Dictionary defines sex discrimination as "the effect of a law or established practice that confers privileges to one class or that denies privileges to a certain class because of . . . sex."³

[Back to top](#)

e. What constitutes sex or gender discrimination under The New York Human Rights Law?

Discrimination in any of the following areas could constitute sex discrimination under New York Human Rights Law (<http://www.nysdhr.com/hrlaw.html>): hiring and firing; compensation, assignment, or classification of employees; transfer, promotion, layoff, or recall; job advertisements; recruitment; testing; use of company facilities; training and apprenticeship programs; fringe benefits; pay, retirement plans, and disability leave; or other terms and conditions of employment. Harassment, retaliation, employment decisions based on stereotypes, and denial of employment opportunities because of marriage to or association with a member of a "protected class" may also constitute sex discrimination.⁴

[Back to top](#)

f. What is an "employee" under this law?

An employee is someone with whom the employer has an employment relationship. The existence of an employment relationship is most easily shown through payroll records. The term "employee" excludes individuals who work for their parents, spouse or children. Domestic service workers and independent contractors are also excluded from the definition.⁵

[Back to top](#)

g. What is an "employer" under this law?

An employer under the New York Human Rights Law (<http://www.nysdhr.com/hrlaw.html>) is one with more than four employees. The law also prohibits labor unions and employment agencies from engaging in acts of discrimination.⁶

[Back to top](#)

h. Are women a “protected class”?

Yes, women are a [protected class](#) because they fall under the protection of federal, state and local anti-discrimination laws. The New York Human Rights Law (<http://www.nysdhr.com/hrlaw.html>), which prohibits discrimination based on sex, protects women as a class.

[Back to top](#)

i. Is there a federal law about sex discrimination?

Title VII of the Civil Rights Act of 1964 (<http://www.eeoc.gov/policy/vii.html>) protects you from discrimination based on sex. Other federal laws such as the Equal Pay Act of 1963 (<http://www.eeoc.gov/policy/epa.html>) and the Pregnancy Discrimination Act, <http://www.eeoc.gov/types/pregnancy.html>, also provide protection against sex discrimination.⁷

[Back to top](#)

j. How does the state law compare with federal in terms of coverage?

The standards of proof in employment discrimination cases brought under New York Human Rights Law (<http://www.nysdhr.com/hrlaw.html>) are the same as those established by the United States Supreme Court for cases brought under Title VII of the Civil Rights Act of 1964 (<http://www.eeoc.gov/policy/vii.html>).⁸ The main differences between federal and state coverage are: 1) that your employer must have 15 or more employees in order to file a Title VII (<http://www.eeoc.gov/policy/vii.html>) claim and only 4 or more for a state claim; 2) that the [statute of limitations](#) is three years for a state claim, whereas you must file with the [EEOC](#) (www.eeoc.gov) within 180 days of the most recent incident of discrimination for a federal claim; and 3) that under federal law you can be awarded up to \$50,000 in combined [compensatory](#) and [punitive](#) damages, whereas under New York State law (<http://www.nysdhr.com/hrlaw.html>), [punitive](#) damages are not available and there is no limit on [compensatory](#) damages.⁹

[Back to top](#)

k. Is it ever okay for my employer to treat or impact women differently because of their sex?

When sex is a [bona fide occupational qualification](#) (BFOQ), it may serve as an exception under the New York Human Rights Law (<http://www.nysdhr.com/hrlaw.html>) which prohibits discrimination based on sex. In order to establish a sex-based [BFOQ](#), an employer must show that the job itself requires workers of only one sex and that such a requirement is necessary, not merely convenient, to the proper operation of the business in question.¹⁰

[Back to top](#)

l. In a nutshell, what must I prove to win my case?

While every sex discrimination case is supported by a different set of facts, you must ultimately be able to demonstrate that “but for” your sex, you would not have suffered an adverse employment action. You must be able to show by a [preponderance of the evidence](#) that employment decisions were made based on sex, rather than on merit.

[Back to top](#)

m. What could my employer do to deny my allegations, and how do I respond to its denials?

Once you have established the necessary elements to bring a claim of discrimination, the employer can offer any of the following legitimate, non-discriminatory reasons for an adverse employment action: 1) business-motivated downsizing or a widespread reduction in force; 2) the terminated employee's salary is economically justified in relation to the contemporaneous market conditions; 3) the hiring of a better or equally qualified applicant; and 4) the terminated employee has demonstrated poor job performance, disruptive behavior at the job, or poor interviewing skills.¹¹ Upon the employer's articulation of a nondiscriminatory reason, you must provide evidence which shows that the reasons offered are [pretextual](#) (a cover up for discriminatory conduct).

[Back to top](#)

n. Does it matter when the discrimination occurred?

The discrimination must have occurred within the past year in order to file a claim with the help of the New York State Division of Human Rights. If you choose to file a claim without the Division's assistance and with your own attorney in state court, you can do so up to three years after the discrimination has occurred.¹² For equal pay claims, keep in mind that each paycheck you received would constitute an occurrence of discrimination.¹³

[Back to top](#)

o. What if my employer has fewer than 4 employees?

First, be certain that your employer actually has fewer than 4 employees. An employee is someone with whom the employer has an employment relationship. All employees, including part-time and temporary workers, are counted for purposes of determining whether an employer has a sufficient number of employees. The existence of an employment relationship is most easily shown by a person's appearance on the employer's payroll. Determining whether an employer has enough employees to be covered by the law is, ultimately, a legal question.¹⁴

Unfortunately, your legal recourse under the New York Human Rights Law (<http://www.nysdhr.com/hrlaw.html>) is limited if your employer has fewer than 4 employees. In enacting the New York Human Rights Law (<http://www.nysdhr.com/hrlaw.html>), the state legislature took its lead from Congress and Title VII (<http://www.eeoc.gov/policy/vii.html>) legislation and set a minimum employee requirement. The minimum employee requirement is intended to protect very

small, essentially self-employed individuals with one or two employees, from the costs of expensive discrimination litigation.¹⁵

If you work for an employer with fewer than 4 employees and feel that you have been discriminated against, you might consider talking with your employer directly, or seek the help of an attorney for other possible legal remedies that may be available outside the realm of the New York Human Rights Law (<http://www.nysdhr.com/hrlaw.html>).

[Back to top](#)

p. Who enforces the law?

New York's Human Rights Law (<http://www.nysdhr.com/hrlaw.html>) is enforced by the New York State Department of Human Rights. [[LINK TO HOW TO FILE A CLAIM](#)]

[Back to top](#)

q. How do I file a claim of sex discrimination with the New York State Division of Human Rights?

To file a complaint with the Division, you must file within one year of the most recent act of discrimination. The Division of Human Rights has offices located throughout the state. You can contact headquarters at (718) 741-8400 to find the office located nearest to you. You may file a complaint in person or by mail. There is no fee to file a claim.¹⁶ [[LINK TO HOW TO FILE A CLAIM](#)]

[Back to top](#)

r. If I prove my sex discrimination claim, what kind of remedies am I entitled to?

Under New York State law (<http://www.nysdhr.com/hrlaw.html>), an employee who successfully proves her claim is entitled to [compensatory](#) damages, which can include [front pay](#) and [back pay](#). No [punitive](#) damages are allowed under New York law (<http://www.nysdhr.com/hrlaw.html>), but there is no limit to the amount of [compensatory](#) damages that may be awarded. [[LINK TO REMEDIES](#)]

[Back to top](#)

WHAT TYPES OF DISCRIMINATION ARE COVERED UNDER THE LAW?

[UNEQUAL PAY: *I don't think I'm being paid fairly compared to men doing the same job.*](#)

(Link to Equal Pay claims)

[DISPARATE IMPACT: *I think my employer's policies disadvantage women more than men.*](#)

(Link to Disparate Impact claims)

[DISPARATE TREATMENT: *I think my employer treats women differently than men.*](#) (Link to Disparate Treatment claims)

[SEXUAL HARASSMENT: *I think I am being sexually harassed at work.*](#) (Link to Sexual Harassment claims)

[PREGNANCY DISCRIMINATION: *I think my employer is discriminating against me because I am pregnant.*](#) (Link to Pregnancy Discrimination claims)

[DISCRIMINATORY HIRING: *I did not get the job I applied for and I think it's because I'm a woman.*](#) (Link to Discriminatory Hiring claims)

[WRONGFULLY DENIED PROMOTION: *I think I didn't get the promotion because I am a woman.*](#) (Link to Wrongfully Denied Promotion claims)

[DISCRIMINATORY FIRING: *I just got fired from my job, and I think it's because I'm a woman.*](#) (Link to Discriminatory Firing claims)

[RETALIATION: *I think my employer fired me because I filed a complaint of sex discrimination.*](#) (Link to Reprisal/Retaliation claims)

EQUAL PAY CLAIMS: *I don't think I'm being paid fairly compared to men doing the same job.*

- a. [How do I prove that I am not receiving equal pay for equal work?](#)
- b. [What does pay discrimination look like?](#)
- c. [What laws protect me from receiving unequal pay for equal work?](#)
- d. [How do I prove that my work requires equal skill, effort, and responsibility as my coworker?](#)
- e. [How do I know if I have a "like or comparable" position?](#)
- f. [Must I prove that my employer intentionally paid me less because I am a female?](#)
- g. [What could my employer do to deny my allegations, and how do I respond to its denials?](#)
- h. [Does it matter how long ago the discrimination occurred? \(new window to WDTLS\)](#)
- i. [If I prove my equal pay claim, what kind of remedies am I entitled to? \(new window to Remedies\)](#)
- j. [What are my options if my employer has fewer than four employees? \(new window to WDTLS\)](#)

[Back to Types of Discrimination](#)

a. How do I prove that I am not receiving equal pay for equal work?

In order to meet the basic requirements for an equal pay claim, you must show

- 1) That your employer pays different wages to employees of the opposite sex;
- 2) That you perform equal work on jobs that require equal skill, effort and responsibility; and
- 3) That the jobs are performed under similar working conditions.¹⁷

[Back to Top](#)

b. What does pay discrimination look like?

Pay discrimination occurs when a woman is paid less than a man who holds a substantially similar position.¹⁸

[Back to Top](#)

c. What laws protect me from receiving unequal pay for equal work?

New York Labor Law § 194 provides that women are to be paid the same wages as men for jobs that require equal skill, effort and responsibility, and which are performed under similar working conditions.¹⁹

[Back to Top](#)

d. How do I prove that my work requires equal skill, effort, and responsibility as my coworker?

While you don't have to show that your job is identical to a higher paid position, you need to show that the two positions are "substantially equal."²⁰ Courts look at the similarities in job descriptions, rather than similarities in job titles.²¹

[Back to Top](#)

e. How do I know if I have a “like or comparable” position?

The courts look to whether or not the content of the job is substantially equal, rather than merely comparable.²² Job descriptions play a vital role in this determination, rather than job titles.

[Back to Top](#)

f. Must I prove that my employer intentionally paid me less because I am a female?

No. You do not need to establish your employer’s discriminatory intent. You only need to show that you were being paid less for equal work. It falls on your employer to show that it paid you differently for legitimate, nondiscriminatory reasons.²³

[Back to Top](#)

g. What could my employer do to deny my allegations, and how do I respond to its denials?

There are certain valid justifications that will allow your employer to unequally compensate you in comparison to a male co-worker. Your employer may counter your allegations by producing evidence showing that the wage disparity exists as a result of: 1) a seniority system; 2) a merit system; 3) a system which measure earnings by quantity or quality of production; or 4) any other factor not based on sex. It is ultimately up to you to show that the defenses your employer raises are actually a [pretext](#) for sex discrimination.²⁴

[Back to Top](#)

DISPARATE IMPACT CLAIMS: *My employer's policies disadvantage women more than men.*

- a. [What does disparate impact mean?](#)
- b. [What kinds of claims can be brought as a disparate impact claim?](#)
- c. [I think that a company policy adversely affects me because of my gender, how do I prove it?](#)
- d. [What is the difference between disparate impact and disparate treatment?](#)
- e. [Are there times when an employment policy or practice may legally impact women differently than men?](#)
- f. [What could my employer do to deny my allegations, and how do I respond to its denials?](#)
- g. [Does it matter how long ago the discrimination occurred? \(new window to WDTLS\)](#)
- h. [If I prove my equal pay claim, what kind of remedies am I entitled to? \(new window to Remedies\)](#)
- i. [What are my options if my employer has fewer than four employees? \(new window to WDTLS\)](#)

[Back to types of discrimination](#)

a. What does disparate impact mean?

Disparate impact refers to an employer's practices or policies that impact women differently than men. Such policies or practices are said to be "[facially neutral](#)," meaning that they are not intended to discriminate, but nonetheless negatively impact women. A common example would be weight and height requirements that preclude women from being hired for a particular job, even though weight and height do not necessarily dictate an ability to function in that job.

[Back to top](#)

b. What kinds of claims can be brought as a disparate impact claim?

Some of the most common types of disparate impact claims are failure to hire and failure to promote claims. In these claims, the employer's policy for hiring or promoting disadvantages women. Other examples of disparate impact claims may relate to pay increases, pregnancy, transfers, training programs, leadership programs, and firing policies.

[Back to top](#)

c. I think that a company policy adversely affects me because of my gender, how do I prove it?

You must show that your employer's [facially neutral](#) policy adversely affects women. For example, a court found that height and weight requirements for hiring professional baseball umpires illegally barred almost every single female applicant.²⁵

[Back to top](#)

d. What is the difference between disparate impact and disparate treatment?

Disparate impact focuses on an employer's practice or policy that seems to be nondiscriminatory, but when applied, unnecessarily discriminates against women. Disparate treatment pertains to the actual treatment of female employees that is less favorable than the treatment of other similarly situated male employees.²⁶

[Back to top](#)

e. Are there times when an employment policy or practice may legally impact women differently than men?

In rare instances, an employer's policy may legally impact women disproportionately. This happens in situations where sex is considered a [bona fide occupational qualification \(BFOQ\)](#). A [BFOQ](#) legitimately exists when your employer can show "that all or substantially all women would be unable to perform safely and efficiently the duties involved."²⁷

[Back to top](#)

f. What could my employer do to deny my allegations, and how do I respond to its denials?

Once you have shown that your employer's policies have a disproportionate impact on women, your employer has the opportunity to show that the policy in question is related to job performance by proving it is a [bona fide occupational qualification](#). If your employer is able to show that the policy is a [BFOQ](#), you have a chance to then show that there is an alternative method or policy which could accomplish your employer's job-related purpose with a less discriminatory impact on women.

[Back to top](#)

DISPARATE TREATMENT CLAIMS: *I think my employer treats women differently than men.*

- a. [What does “disparate treatment” mean?](#)
- b. [I think that a company policy adversely affects me because of my gender, how do I prove it?](#)
- c. [What is the difference between disparate treatment and disparate impact?](#)
- d. [What types of claims can be brought under disparate treatment?](#)
- e. [Are there times when an employment policy or practice may legally treat women different than men?](#)
- f. [What could my employer do to deny my allegations, and how do I respond to its denials?](#)

[Back to Types of Discrimination](#)

a. What does “disparate treatment” mean?

Disparate treatment refers to the less favorable treatment of female employees for reasons based on sex.

[Back to Top](#)

b. I think that a company policy adversely affects me because of my sex, how do I prove it?

You must show:

1. That you are a member of a [protected group](#) (i.e. a female);
2. That you were treated differently than a man for the same or similar conduct; and
3. That your protected status was a motivating factor, though not necessarily the only factor in the treatment.²⁸

[Back to Top](#)

c. What is the difference between disparate treatment and disparate impact?

To prove charges of disparate impact, a plaintiff would challenge [facially neutral](#) practices, procedures or tests to reveal that although they may not be intended to be discriminatory, they have a discriminatory effect. To prove charges of discriminatory treatment, a plaintiff must show that intentional discrimination was directed against a protected person or group.²⁹

[Back to Top](#)

d. What types of claims can be brought under disparate treatment?

The same types of claims that can be brought under disparate impact can also be brought under disparate treatment. Claims may include those relating to compensation, promotion, pregnancy, hiring and firing. The main difference is that you will need to show that your employer intentionally treated you differently because of your sex.

[Back to Top](#)

e. Are there times when an employment policy or practice may legally treat women different than men?

It is legal for an employer to place requirements on positions that differentiate between men and women as long as it is a necessary factor for performance. For example, being a man is a [bona fide occupational qualification](#) for functioning as a male clothing model. However, it is illegal for an employer to refuse to hire a female simply because customers or co-workers would prefer to see a man in that position.

[Back to Top](#)

f. What could my employer do to deny my allegations, and how do I respond to its denials?

Once you have shown that your employer treats you differently compared to similarly situated males in your position, your employer can refute your allegation by raising a legitimate reason for the disparate treatment. Your employer may assert that a particular sex is a [bona fide occupational qualification](#). You can respond to and refute the legitimacy of your employer's explanation by showing that the sex-based qualification is not reasonably necessary for performance of the job.³⁰

[Back to Top](#)

SEXUAL HARASSMENT: *I think I am being sexually harassed at work.*

- a. [I think I am being sexually harassed at work, how do I prove it?](#)
- b. [What does “Quid Pro Quo” sexual harassment look like?](#)
- c. [What does “Hostile Work Environment” sexual harassment look like?](#)
- d. [How do I show that this conduct affected my ability to work?](#)
- e. [How do I show that my employer knew what was going on?](#)
- f. [Can I file a claim against my boss/supervisor under the New York Human Rights Law?](#)
- g. [Can I bring a claim against my co-worker if he is not my boss or supervisor?](#)
- h. [I complained to my employer and it reprimanded the harasser. Can I still file a claim?](#)
- i. [I reported to my employer, but it didn’t do anything. Can I still file a claim?](#)
- j. [What if my harasser is also a woman?](#)
- k. [Is one incident of sexual harassment sufficient basis for a claim?](#)
- l. [Can I get damages for emotional distress?](#)
- m. [What is the difference between sex discrimination and sexual harassment?](#)
- n. [Does it matter how long ago the discrimination occurred? \(new window to WDTLS\)](#)
- o. [If I prove my equal pay claim, what kind of remedies am I entitled to? \(new window to Remedies\)](#)
- p. [What are my options if my employer has fewer than four employees? \(new window to WDTLS\)](#)

[Back to Types of Discrimination](#)

a. I think I am being sexually harassed at work, how do I prove it?

To show sexual harassment, you must demonstrate that:

- 1) you are a member of a “[protected group](#),” i.e., female;
- 2) you were subject to unwelcome sexual harassment;
- 3) the harassment complained of was based upon your membership in the protected class, i.e., women;
- 4) the harassment complained of affected the terms, conditions or privileges of your employment; and
- 5) your employer knew or should have known of the harassment.³¹

[Back to top](#)

b. What does “Quid Pro Quo” sexual harassment look like?

[Quid pro quo](#) sexual harassment occurs when unwelcome sexual conduct—either sexual advances, sexual offers, or verbal or physical conduct of a sexual nature—is used by an employer against an employee as the basis for employment decisions. A claim of [quid pro quo](#) harassment can be made regardless of whether the sexual favors were refused or accepted by the employee, and since the main issue in [quid pro quo](#) claims is unwelcome sexual advances, the employee does not need to suffer economic loss.³²

[Back to top](#)

c. What does “Hostile Work Environment” sexual harassment look like?

A [hostile work environment](#) is created when you are subjected to discriminatory intimidation, ridicule, or insult, sufficient to alter your conditions of employment. Generally, single incidences of sexual harassment are not sufficient to show a [hostile work environment](#), but rather an employee must show that the offensive conduct being committed in the workplace is pervasive.³³

[Back to top](#)

d. How do I show that this conduct affected my ability to work?

To show that sexual harassment affected your ability to work, you must show that the behavior was sufficiently severe, pervasive, and offensive to a reasonable person in a similar situation. To determine the severity of the harassment, the “totality of the circumstances,” or your overall working conditions, will be reviewed.³⁴

[Back to top](#)

e. How do I show that my employer knew what was going on?

To show that your employer knew what was going on, you must demonstrate that either your employer was participating in the actual harassment by contributing to the hostile work environment or, if the harassment was being conducted by co-workers, that your employer (or supervisor) was informed of the hostile environment and made no effort to deter the harassment.³⁵

[Back to top](#)

f. Can I file a claim against my boss/supervisor under the New York State Law?

Yes. Under New York State law (<http://www.nysdhr.com/hrlaw.html>), you may bring a claim of sexual harassment against your employer and anyone individually responsible for creating a [hostile work environment](#), as long as your supervisor/employer was aware of the harassment and did nothing to correct it. You may also bring a claim against your supervisor as an individual if your supervisor was an active participant in the alleged sexual harassment.³⁶

[Back to top](#)

g. Can I bring a claim against my co-worker if he is not my boss or supervisor?

Yes. Under New York State law (<http://www.nysdhr.com/hrlaw.html>) you may bring a claim of sexual harassment against your employer and anyone individually responsible for creating a [hostile work environment](#).³⁷

[Back to top](#)

h. I complained to my employer and they reprimanded the harasser. Can I still win my claim?

Unfortunately, it is not likely that you can make a successful claim. Under New York law (<http://www.nysdhr.com/hrlaw.html>) if you notify your employer of a hostile work

environment and your employer promptly investigates the situation and reprimands the harasser(s) so that you are no longer subjected to a hostile work environment, then it is likely your claim will not be successful.³⁸

[Back to top](#)

i. I reported to my employer, but they didn't do anything – can I still file a claim?

Absolutely. If you can show that your employer knew, or at least should have known, that harassment was occurring and your employer “failed to take appropriate measures to halt such conduct,” there is a strong basis for a claim.³⁹

[Back to top](#)

j. What if my harasser is also a woman?

The Supreme Court has ruled that sex discrimination claims for same-sex sexual harassment can be brought under Title VII of the Civil Rights Act of 1964 (<http://www.eeoc.gov/policy/vii.html>).⁴⁰ Since the New York Human Rights Law (<http://www.nysdhr.com/hrlaw.html>) mirrors the language of [Title VII](#) (<http://www.eeoc.gov/policy/vii.html>), same-sex sexual harassment would also be actionable in New York. If you are being harassed because of your sex, it doesn't matter whether your harasser is a man or a woman.

[Back to top](#)

k. Is one incident of sexual harassment a sufficient basis for a claim?

Generally speaking, a single incident of sexual misconduct is not sufficient to establish a claim of a [hostile work environment](#). The [hostile work environment](#) is usually established by severe and pervasive incidents of sexual misconduct.⁴¹ However, single incidents of [quid pro quo](#) sexual harassment are sufficient to establish a claim.

[Back to top](#)

l. Can I get damages for emotional distress?

Under New York State Human Rights Law you may be entitled to damages associated with mental anguish if your claim is successful.⁴²

[Back to top](#)

m. What is the difference between sex discrimination and sexual harassment?

Sex discrimination occurs when hiring, firing, and promotion practices are based on an employee's gender. Sexual harassment, on the other hand, occurs when a woman is subjected to a [hostile work environment](#) that is pervasively offensive to a reasonable person in her situation, or if a woman is subjected to sexual offers or advances in which her reaction or response to such advances serve as the basis for employment decisions.⁴³

[Back to top](#)

PREGNANCY DISCRIMINATION CLAIMS: *I think my employer is discriminating against me because I am pregnant.*

- a. [What is pregnancy discrimination and does the New York Human Rights Law cover it?](#)
- b. [I think I am being impacted or treated differently because of my pregnancy. How do I prove it?](#)
- c. [I just found out that I'm pregnant, should I tell my employer?](#)
- d. [Can my employer fire me because I may become pregnant?](#)
- e. [Can I ask my employer to make accommodations for me on account of my pregnancy?](#)
- f. [How do I prove that I need a special accommodation?](#)
- g. [For what amount of time can I take leave because of pregnancy?](#)
- h. [What happens to my job while I am on pregnancy leave?](#)
- i. [Can my employer deny me pregnancy leave?](#)
- j. [I've been missing a lot of work due to prenatal check-ups or pregnancy-related complications; can my employer fire me for this?](#)
- k. [Is my employer required to pay me while I am on pregnancy leave?](#)
- l. [I'm pregnant but not showing yet and I have an upcoming interview, do I need to disclose the fact that I'm pregnant?](#)
- m. [Can my employer prevent me from working while I'm pregnant or require me to take a certain amount of leave?](#)
- n. [Does my employer's health insurance have to cover the medical costs of my pregnancy?](#)
- o. [Can my employer treat me differently because I am unmarried and pregnant?](#)
- p. [I was pregnant, but had a miscarriage or an abortion, and need time off to recover. Am I covered by the law?](#)
- q. [What could my employer do to deny my allegations, and how do I respond to its denials?](#)
- r. [I was recently denied a promotion and the person who actually got the position was another woman. Can I still file a claim for pregnancy discrimination?](#)
- s. [Does it matter how long ago the discrimination occurred? \(new window to WDTLS\)](#)
- t. [If I prove my equal pay claim, what kind of remedies am I entitled to? \(new window to Remedies\)](#)
- u. [What are my options if my employer has fewer than four employees? \(new window to WDTLS\)](#)

[Back to Types of Discrimination](#)

- a. **What is pregnancy discrimination and does New York Human Rights Law cover it?**
Pregnancy discrimination occurs when an employer treats a pregnant employee less favorably than other employees with non-pregnancy-related disabilities. The New York

Human Rights Law (<http://www.nysdhr.com/hrlaw.html>) prohibits this type of discrimination.⁴⁴

[Back to Top](#)

b. I think I am being impacted or treated differently because of my pregnancy. How do I prove it?

In order to show that you are being discriminated against due to a pregnancy, you must provide proof that you were treated in a manner less favorable than any other employee expecting to experience a prolonged disability.⁴⁵

[Back to Top](#)

c. I just found out that I'm pregnant, should I tell my employer?

The decision to tell your employer is entirely up to you. Although you are not obligated to provide your employer with news of your pregnancy, it may be beneficial to let them know in case you need special accommodations. Be assured that your employer cannot fire you simply because you are pregnant. The New York Human Rights Law (<http://www.nysdhr.com/hrlaw.html>) prohibits this type of discrimination based on sex.

[Back to Top](#)

d. Can my employer fire me because I may become pregnant?

Your employer cannot fire you because you may become pregnant. The New York Human Rights Law (<http://www.nysdhr.com/hrlaw.html>) prohibits this type of discrimination based on sex.

[Back to Top](#)

e. Can I ask my employer to make accommodations for me on account of my pregnancy?

Yes. If an employer typically provides modified tasks, alternative assignments, leaves without pay, or other accommodations for other disabilities, the employer must treat pregnancy-related disabilities in the same manner. For example, a pregnant bus driver with a history of miscarriages was refused accommodations for her disability while her employer had routinely done so for temporarily disabled male employees. This is an example of sex discrimination for which the plaintiff was able to recover.⁴⁶

[Back to Top](#)

f. How do I prove that I need a special accommodation?

A note from your doctor specifying the need for an accommodated work environment should be sufficient.⁴⁷

[Back to Top](#)

g. For what amount of time can I take leave because of pregnancy?

The New York Workers' Compensation Law allows for short term disability leave. An employer is required to permit the same amount of leave for pregnancy-related disabilities as it would for any other type of disability.⁴⁸ The law allows for up to 26 weeks leave at 50% of the employee's average weekly salary.⁴⁹ The federal Family Medical Leave Act allows up to 12 weeks unpaid leave after the birth of your child if your employer has at least 50 employees or (and?) you have been employed by the company for one year.⁵⁰

[Back to Top](#)

h. What happens to my job while I am on pregnancy leave?

You should be able to return to your former position as long as your employer follows this standard in other cases of disability leave.⁵¹

[Back to Top](#)

i. Can my employer deny me pregnancy leave?

No. Denial of sick leave benefits for pregnancy-related disabilities when they are provided for other forms of disability constitutes unlawful discrimination under the New York Human Rights Law (<http://www.nysdhr.com/hrlaw.html>).⁵²

[Back to Top](#)

j. I've been missing a lot of work due to prenatal check-ups or pregnancy-related complications; can my employer fire me for this?

A pregnant employee who takes pregnancy-related leave must be permitted to take advantage of her sick leave to the same extent as if she were suffering from some other temporary physical disability. You cannot be fired for using accrued sick time.⁵³

[Back to Top](#)

k. Is my employer required to pay me while I am on pregnancy leave?

To the extent that your employer pays employees who are on disability leave for other types of disabilities, your employer is required to pay you while you are on maternity leave.⁵⁴ In other words, your employer does not have to provide paid leave if it does not pay employees who go on medical leave other reasons.

[Back to Top](#)

l. I'm pregnant but not showing yet and I have an upcoming interview, do I need to disclose the fact that I'm pregnant?

While you do not need to disclose your pregnancy at the time of an interview, you should feel free to do so knowing that the New York Human Rights Law (<http://www.nysdhr.com/hrlaw.html>) prohibits discrimination on the basis of sex. This

means that a failure to hire you based on your pregnancy would be a violation of state law.

[Back to Top](#)

m. Can my employer prevent me from working while I'm pregnant or require me to take a certain amount of leave?

New York Human Rights Law (<http://www.nysdhr.com/hrlaw.html>) prohibits an employer from compelling a pregnant employee to take a leave of absence unless the pregnancy prevents her from performing the tasks of her job in a reasonable manner.⁵⁵

[Back to Top](#)

n. Does my employer's health insurance have to cover the medical costs of my pregnancy?

Not every employer is required to offer a health plan. However, if your employer offers a group policy which provides hospital, surgical, or medical coverage, it must also include coverage for maternity care. The maternity care provision must include hospital, surgical, or medical care to the same extent that coverage is provided for illness or disease under the policy.⁵⁶

[Back to Top](#)

o. Can my employer treat me differently because I am unmarried and pregnant?

An employer cannot discriminate on the basis of pregnancy because this constitutes sex discrimination as prohibited by the New York Human Rights Law (<http://www.nysdhr.com/hrlaw.html>). However, an employer may raise a [bona fide occupational qualification](#) (BFOQ) as a defense if it can show that its policy can be justified as a business necessity.

[Back to Top](#)

p. I was pregnant, but had a miscarriage or an abortion, and need time off to recover. Am I covered by the law?

You will need to check with your employer about their policies regarding abortion. However, a miscarriage falls within the realm of protection afforded by the New York Human Rights Law (<http://www.nysdhr.com/hrlaw.html>). The law has supported a finding of pregnancy discrimination where it was shown that the employee's request for a leave of absence due to complications from a miscarriage was denied by the employer, despite a doctor's note, while male counterparts were treated more favorably in being allowed to take leave without adequate time accruals.⁵⁷

[Back to Top](#)

q. What could my employer do to deny my allegations, and how do I respond to its denials?

In order to overcome the presumption of retaliation, an employer may provide proof of comparable policies with respect to non-pregnancy-related disabilities. It would then be your burden to show that a disparity exists with respect to other disabilities or that other disabilities are afforded greater benefits than pregnancy-related disabilities.

[Back to Top](#)

r. I was recently denied a promotion and the person who was awarded the position was another woman. Can I still file a claim for pregnancy discrimination?

It is possible to file a claim of sex discrimination based on your pregnancy even if another female was awarded a position for which you had also applied. Courts have found the existence of discrimination in cases where one person in a protected class has lost out to another person in the same protected class.⁵⁸ If you were denied the promotion because of your pregnancy, you may still have a claim of discrimination.

[Back to top](#)

DISCRIMINATORY HIRING POLICIES: *I wasn't hired because I'm a woman.*

- a. [I think I wasn't hired because I'm a woman, how do I prove it?](#)
- b. [The interviewer asked me some very personal questions. Is that legal?](#)
- c. [The interviewer stated that his customers would prefer to see a man do this job rather than a woman. Is this a legal reason not to hire me?](#)
- d. [What could my employer do to deny my allegations, and how do I respond to its denials?](#)
- e. [Does it matter how long ago the discrimination occurred? \(new window to WDTLS\)](#)
- f. [If I prove my equal pay claim, what kind of remedies am I entitled to? \(new window to Remedies\)](#)
- g. [What are my options if my employer has fewer than four employees? \(new window to WDTLS\)](#)

[Back To Types of Discrimination](#)

a. I think I wasn't hired because I'm a woman, how do I prove it?

You must show:

- 1) That you are a member of a **protected class** (i.e. a woman);
- 2) That you were barred from a position for which you were qualified; and
- 3) That the employer's failure to hire you gave rise to an inference of discrimination.

This inference can be drawn from the fact that a male was hired instead of you or that after you were denied for the position, the employer continued to seek applicants with similar qualifications.⁵⁹

[Back to top](#)

b. The interviewer asked me some very personal questions. Is that legal?

The law prohibits an employer from asking questions during an interview to seek information about your membership in a **protected group**.⁶⁰

[Back to top](#)

c. The interviewer stated that his customers would prefer to see a man do this job rather than a woman. Is this a legal reason not to hire me?

New York State does not recognize **bona fide occupational qualifications** (BFOQ) that exclude members of protected classes unless the absence of the protected characteristic is material to job performance. The preference of customers, co-workers or employers never justifies sex as a basis for hire.⁶¹

[Back to top](#)

d. What could an employer do to deny my allegations, and how do I respond to its denials?

The employer may raise legitimate reasons for not hiring you, either by showing that sex is a [bona fide occupational qualification](#) (that only a man can do the job), or by offering some other nondiscriminatory reason. You would need to show that “but for” your being a female, you would have been deemed qualified. You must present evidence to show that the reasons given by the employer for not hiring you are [pretextual](#) (a cover-up for discrimination).⁶²

[Back to top](#)

WRONGFULLY DENIED PROMOTION: *I think I was denied a promotion because I'm a woman.*

- a. [I think I did not get the promotion because I'm a woman, how do I prove it?](#)
- b. [Must I show that I took proactive steps to get the promotion, and that I was qualified?](#)
- c. [Must I show that my employer sought a replacement with similar qualifications?](#)
- d. [My employer promoted another woman instead of me. Can I still file a claim for sex discrimination?](#)
- e. [What could my employer do to deny my allegations, and how do I respond to its denials?](#)
- f. [Does it matter how long ago the discrimination occurred? \(new window to WDTLS\)](#)
- g. [If I prove my equal pay claim, what kind of remedies am I entitled to? \(new window to Remedies\)](#)
- h. [What are my options if my employer has fewer than four employees? \(new window to WDTLS\)](#)

[Back to Types of Discrimination](#)

a. I think I did not get the promotion because I'm a woman, how do I prove it?

You must show:

- 1) That you are a member of a “[protected class](#)” (i.e. a woman);
- 2) That you were qualified for the position in question;
- 3) That you were denied the promotion; and
- 4) That the promotion was denied in circumstances that indicate sexual discrimination may have been a factor.

An inference of sexual discrimination may be drawn by direct evidence (testimony), statistical evidence (prior incidents) or simply by showing that the position was filled or held open for an individual not in the same protected class.⁶³

[Back to top](#)

b. Must I show that I took proactive steps to get the promotion, and that I was qualified?

You do not necessarily have to show that you took proactive steps to get a promotion. In some cases where sex discrimination has been found to occur, the female employee was passed over for a promotion without her knowledge, and men were sought out for supervisory positions in her department without her being contacted.⁶⁴

[Back to top](#)

c. Must I show that my employer sought a replacement with similar qualifications?

It is not always necessary to show that a replacement had similar qualifications. The court has found sex discrimination in cases where a male was hired for a position based upon qualifications not included in the advertisement for the position.⁶⁵

[Back to top](#)

d. My employer promoted another woman instead of me; can I still file a claim for sex discrimination?

You can still make out a case for sex discrimination even if you were replaced by a woman, if you can show that you were not promoted because of your employer's stereotypical expectation of women in your position.⁶⁶

[Back to top](#)

What could my employer do to deny my allegations, and how do I respond to its denials?

Your employer may offer evidence that sex is a [bona fide occupational qualification](#) (BFOQ) for the position in question. You can respond by showing that there are reasonable alternatives available that are less discriminatory than only hiring males for the position. Your employer might also offer other legitimate, nondiscriminatory reasons for denying you the promotion. It is up to you to show that the reasons offered by your employer are [pretextual](#), in other words, that they are a cover-up for sex discrimination.

[Back to top](#)

WRONGFUL TERMINATION: *I think I was fired because I'm a woman.*

- a. [I think I was fired because I'm a woman, how do I prove it?](#)
- b. [Are women a "protected class"?](#)
- c. [How do I show that my legally protected class led to my discharge?](#)
- d. [What could my employer do to deny my allegations, and how do I respond to its denials?](#)
- e. [Does it matter how long ago the discrimination occurred? \(new window to WDTLS\)](#)
- f. [If I prove my equal pay claim, what kind of remedies am I entitled to? \(new window to Remedies\)](#)
- g. [What are my options if my employer has fewer than four employees? \(new window to WDTLS\)](#)

[Back To Types of Discrimination](#)

a. I think I was fired because I'm a woman, how do I prove it?

You must show:

- 1) That you are a member of a statutorily "**protected class**" (i.e. a woman);
- 2) That you were qualified for the job; and
- 3) That the discharge occurred in circumstances giving rise to an inference of discrimination.⁶⁷

In raising an inference of discriminatory discharge, you might show, for example, that you and your male colleagues committed the same acts, but that only you were fired for those acts.⁶⁸

[Back to top](#)

b. Are women a "protected class"?

Yes, women are considered a **protected class** because of the history of discrimination against them. A statutorily protected class, such as women, is one that benefits from the protections of federal, state or local anti-discrimination laws.⁶⁹

[Back to top](#)

c. How do I show that my legally protected class led to my discharge?

In order to show that your discharge was connected to the fact that you're a woman, you must provide proof that had you been a man, you would not have been fired. You can do this by using direct evidence such as a person's testimony or by providing statistics of the discriminatory conduct.⁷⁰ It is important to note that even if a woman replaced you, you may still have a claim if you can show that you were fired because of your employer's stereotypical expectations for women in your position.⁷¹

[Back to top](#)

d. What could my employer do to deny my allegations, and how do I respond to its denials?

Once you have shown that your termination is connected to the fact that you're a woman, your employer may offer evidence indicating that it fired you for legitimate and lawful reasons, or may raise the [BFOQ](#) defense. It is your burden to ultimately convince the court that your employer fired you, at least in part, because of your sex.

[Back to top](#)

RETALIATION/REPRISAL: *I think my employer fired me because I filed a sex discrimination claim.*

- a. [What is retaliation or reprisal, and how do I prove it?](#)
- b. [For what reasons can I be fired?](#)
- c. [What is “protected conduct”?](#)
- d. [How do I show that my legally protected conduct led to my discharge?](#)
- e. [Did my employer retaliate against me by taking an “adverse action”?](#)
- f. [Must I show that my employer knew about my “protected conduct”?](#)
- g. [What evidence must I show to prove that my “protected conduct” led to my being fired?](#)
- h. [I’ve just received a warning from my employer, and I suspect I will be fired soon. What should I do?](#)
- i. [What can I do to protect any legal rights I might have before leaving my job?](#)
- j. [What could my employer do to deny my allegations, and how do I respond to its denials?](#)
- k. [Does it matter how long ago the discrimination occurred? \(new window to WDTLS\)](#)
- l. [If I prove my equal pay claim, what kind of remedies am I entitled to? \(new window to Remedies\)](#)
- m. [What are my options if my employer has fewer than four employees? \(new window to WDTLS\)](#)

[Back to Types of Discrimination](#)

a. What is retaliation or reprisal, and how do I prove it?

Retaliation is when an employee suffers an adverse employment decision (i.e., termination) from her employer for filing a claim of sexual harassment or discrimination. To show retaliation you must show:

- 1) that you engaged in a [protected activity](#);
- 2) that your employer was aware of her participation;
- 3) that your employer took an adverse employment action against you; and
- 4) that a causal connection exists between the protected activity and the adverse employment action.⁷²

[Back to top](#)

b. For what reasons can I be fired?

You can be fired for any reason that is “legitimate.” Any employment decision not made on the basis of sex or in a retaliatory manner can be a legitimate reason. For example, if a company downsizes or if you are unqualified for a job, you may not have a claim for wrongful discharge or retaliation. Traditional reasons for firing, such as excessive absences or tardiness, or violating company rules, are also legitimate reasons.

[Back to top](#)

c. What is “protected conduct”?

[Protected conduct](#) includes filing a charge of discrimination or harassment, threatening to file a charge of discrimination or harassment, or assisting someone in filing a charge of sexual harassment or discrimination.

[Back to top](#)

d. How do I show that my legally protected conduct led to my discharge?

There are several ways in which you can show that your legally protected conduct led to your discharge. Timing is perhaps the biggest indicator of retaliation, but you can also show retaliation by showing that other employers who engaged in a protected activity were also fired and that employees who did not engage in a protected activity were not fired.

[Back to top](#)

e. Did my employer retaliate against me by taking an “adverse action”?

An adverse action occurs when your employer fires, demotes, or fails to promote you as a result of your engaging in a protected activity, and that is considered retaliation.⁷³

[Back to top](#)

f. Must I show that my employer knew about my “protected conduct”?

Yes. You must show that your employer knew about your protected conduct in order to establish the connection between you engaging in the protected activity and subsequently being fired. Failure to prove your employer was aware of your protected activity prevents you from being able to bring a claim of retaliation.

[Back to top](#)

g. What evidence must I show to prove that my “protected conduct” led to my being fired?

The easiest way to show that your [protected activity](#) led to your being fired is through “temporal proximity.” Simply put, the timing between you engaging in a protected activity and subsequently being fired is often the best indicator of whether your employer fired you for engaging in a [protected activity](#).

[Back to top](#)

h. I’ve just received a warning from my employer, and I suspect I will be fired soon. What should I do?

First and foremost make absolutely sure that you understand the reasons for which you are being fired. If you are unclear why you are being warned or fired, ask for clarification from your supervisor. If you feel that you are being warned or fired discriminatorily, assess the situation by looking at the timing of your firing and recent trends of your employer. If you have recently engaged in a protected activity you may

have a claim of retaliation. If your employer has a trend of disproportionately firing women, you may instead have a claim of sex discrimination.

[Back to top](#)

i. What can I do to protect any legal rights I might have before leaving my job?

The easiest way to protect your legal rights before leaving your job is to document everything. Even if you initially feel as if your firing was not retaliatory or discriminatory, cover all of your bases by asking for the termination letter in writing, and saving all written warning letters. To ease any potential claims you may have against your employer, document the dates of any decisions or actions affecting your employment, including salary or benefit increases/decreases, recommendations, and reprimands.

[Back to top](#)

j. What could my employer do to deny my allegations, and how do I respond to its denials?

Your employer has a chance to deny your allegations by offering legitimate reasons for which it fired you. Upon the employer's showing of legitimate, non-discriminatory reasons for your firing, you have an opportunity to disprove these reasons by demonstrating that your termination was in fact based on subjective, retaliatory motives.⁷⁴

[Back to top](#)

HOW DO I FILE A CLAIM?

- a. [How do I file a state claim with the New York State Division of Human Rights?](#)
- b. [How do I contact the New York State Division of Human Rights?](#)
- c. [Against whom can I file a claim?](#)
- d. [If I choose to file a claim, what is expected of me?](#)
- e. [How long will the process take?](#)
- f. [Do I need an attorney?](#)
- g. [Where do I find an attorney?](#)
- h. [What if I can't afford an attorney?](#)
- i. [What will my attorney need from me?](#)
- j. [Do I have to contact the New York State Division of Human Rights?](#)
- k. [Can't I sue my employer directly without going through the New York State Division of Human Rights?](#)
- l. [Who will investigate my complaint?](#)
- m. [What do I do after my initial contact with the New York State Division of Human Rights?](#)
- n. [What happens after I submit my claim?](#)
- o. [What happens if the investigators determine that no "reasonable" or "probable" cause exists on which to base a claim?](#)
- p. [What happens if the investigator determines that "reasonable" or "probable" cause exists on which to base a claim?](#)
- q. [Can I sue my employer?](#)
- r. [Can I appeal a decision of the Division?](#)
- s. [Can I file a federal claim of employment discrimination as well? If so, how?](#)
- t. [What are the advantages and disadvantages of filing a federal claim over a state claim?](#)

[Back to Main](#)

- a. **How do I file a state claim with the New York State Division of Human Rights?**
You may file a state claim of sexual harassment or discrimination up to one year after the most recent alleged incident occurred by contacting the Division and explaining your case.⁷⁵

[Back to top](#)

- b. **How do I contact the New York State Division of Human Rights?**⁷⁶
The New York State Division of Human Rights has offices throughout the state of New York in the cities of Albany, Binghamton, Brooklyn, Buffalo, Manhattan, Long Island, Syracuse, Rochester, and Peekskill. You can call the main office in New York City at (718) 741-8400, visit the website at www.NYSDDR.com, or write to them at:

New York State Division of Human Rights
One Fordham Plaza
Bronx, New York

[Back to top](#)

c. Against whom can I file a claim?

You may file a claim against your employer if it was aware of the sexual harassment or discrimination but did nothing about it, or if it actively participated in the sexual harassment or discrimination against you. Additionally, you may bring claims against individual co-workers who subjected you to sexual harassment.

[Back to top](#)

d. If I choose to file a claim, what is expected of me?

If you choose to file a claim with the Division of Human Rights, with your own attorney, or both, it is expected that you have all the names, titles, addresses, and phone numbers of the persons who you feel have discriminated against you. Also, provide any documentation of such discrimination and, if possible, any information on witnesses or individuals who might be able to provide evidence of your discrimination claim.⁷⁷

[Back to top](#)

e. How long will the process take?

After filing a claim with the Division, it will attempt to negotiate or reconcile with your employer within 180 days. Unfortunately, the process of filing a claim and being awarded the damages you feel you are entitled to is not always an easy or quick process.⁷⁸

[Back to top](#)

f. Do I need an attorney?

It is not necessary to hire an attorney if you file a claim with the New York State Division of Human Rights. However, you may feel free to hire an attorney outside of the Division should you choose to do so.

[Back to top](#)

g. Where do I find an attorney?

It is not necessary to contact a lawyer if you choose to file a claim through the New York State Division of Human Rights. However, if you would like to seek outside legal help, the Division may be able to locate a lawyer for you.

[Back to top](#)

h. What if I can't afford an attorney?

If you cannot afford an attorney you can simply file a claim, free of charge, with the New York State Human Rights Division. [\[LINK TO CONTACT INFO\]](#)

[Back to top](#)

i. What will my attorney need from me?

Regardless of whether you file a claim with the Division, with your own attorney, or both, it is to be expected that you provide specific information regarding the alleged incidents. Names, numbers, and addresses of your employer and those involved in the incident, along with detailed accounts of the events, including dates and specifics, are usually expected of an employee seeking to file a claim of sexual harassment or discrimination.

[Back to top](#)

j. Do I have to contact the New York State Division of Human Rights?

You do not have to contact the Division unless you want to file a claim. It is not required that you contact the Division at all. They merely act as an aid in your claim of sexual harassment or discrimination. You may seek an outside attorney at any time during your claim, regardless of whether you file a claim with the Division or not. If you choose to file with the Division, you must do so within one year of the alleged incident. If you choose to bring an independent claim in the courts without the help of the Division, you have up to three years after the alleged incident to file a claim.⁷⁹

[Back to top](#)

k. Can't I sue my employer directly without going through the New York State Division of Human Rights?

You have the option of directly suing your employer up to three years after the alleged incidence(s) took place. However, you may not file with both the Division and the State court. The Division enforces the New York Human Rights Law (<http://www.nysdhr.com/hrlaw.html>) and serves mainly to ease the process of investigating sexual harassment or discrimination.⁸⁰

[Back to top](#)

l. Who will investigate my complaint?

If you choose to file with the Division, an investigator will respond to your claim by performing fact-finding measures. The investigator will use the evidence gathered in the investigation to determine whether there is appropriate jurisdiction and sufficient [probable cause](#) to continue with your claim.⁸¹

[Back to top](#)

m. What do I do after my initial contact with the New York State Division of Human Rights?

“Based on the allegations in your complaint, an investigator will conduct a fact-finding investigation. Based on the evidence collected during the investigation, the

Division makes a determination of whether there is [probable cause](#) to believe that unlawful discrimination took place. A determination of **no [probable cause](#)** will result in the dismissal of your case.”⁸²

[Back to top](#)

n. What happens after I submit my claim?

After the filing of your complaint, the Division will promptly serve a copy on the employer and all persons it deems to be necessary parties and make prompt investigation in connection to the complaint. Within 180 days after a complaint is filed, the Division will determine whether it has jurisdiction and, if so, whether there is [probable cause](#) to believe that the employer has engaged in or is engaging in an unlawful discriminatory practice.⁸³

[Back to top](#)

o. What happens if the investigators determine that no “reasonable” or “probable” cause exists on which to base a claim?

If the Division finds no [probable cause](#) on your claim, it only means that it will not assist you with your claim. By no means are you barred from bringing a claim against your employer, but you must seek outside assistance. If you feel like you have been sexually harassed or discriminated against at work but the Division believes otherwise, don’t be discouraged. Contact a lawyer familiar with employment law and explain your case to him or her. You may appeal to the State Supreme Court within 60 days after a finding of no [probable cause](#) by the Division.⁸⁴

[Back to top](#)

p. What happens if the investigator determines that “reasonable” or “probable” cause exists on which to base a claim?

If [probable cause](#) is found, the Division will notify you and the employer of the time and place of a public hearing. A successful conciliation or public hearing between you and the employer can serve as the means through which you may be entitled to relief ([compensatory damages](#), [back pay](#), [front pay](#), [reinstatement](#)). If the administrative law judge finds that discrimination occurred, the employer will most likely also be required to stop its discriminatory behavior.

[Back to top](#)

q. Can I sue my employer?

Yes. Under New York State law (<http://www.nysdhr.com/hrlaw.html>), you may bring a claim of sexual harassment against your employer and anyone individually responsible for creating a hostile work environment, as long as your supervisor/employer was aware of the harassment and did nothing to correct it or where a supervisor/employer was an active participant in the alleged sexual harassment.⁸⁵

[Back to top](#)

r. Can I appeal a decision of the Division?

Yes, you may. If you are unsatisfied with the decision on your claim, you may file an appeal with the State Supreme Court within 60 days.⁸⁶

[Back to top](#)

s. Can I file a federal claim of employment discrimination as well? If so, how?

At your request, and assuming you meet the minimum requirements of federal coverage (ie., your employer employs at least fifteen employees), the Division will send the Equal Employment Opportunity Commission (EEOC) (www.eeoc.gov) a copy of your complaint. By notifying the EEOC (www.eeoc.gov) of the alleged discrimination, you are entitled to bring a federal claim of employment discrimination under Title VII of the 1964 Civil Rights Act (<http://www.eeoc.gov/policy/vii.html>). To qualify for federal protection under Title VII (<http://www.eeoc.gov/policy/vii.html>), your employer must have at least 15 employees, compared to 4 under New York law (<http://www.nysdhr.com/hrlaw.html>).

[Back to top](#)

t. What are the advantages and disadvantages of filing a federal claim over a state claim?

The standards of proof in employment discrimination cases brought under New York Human Rights Law (<http://www.nysdhr.com/hrlaw.html>) are the same as those established in the United States Supreme Court for cases brought under Title VII of the Civil Rights Act of 1964 (<http://www.eeoc.gov/policy/vii.html>).⁸⁷ The main differences between federal and state coverage are 1) that your employer must have 15 or more employees in order to file a Title VII (<http://www.eeoc.gov/policy/vii.html>) claim and only 4 or more for a state claim; 2) that the statute of limitations is three years for a state claim, while you must file with the EEOC (www.eeoc.gov) within 180 days of the most recent incident for a federal claim; and 3) that under federal law you can be awarded up to \$50,000 in combined [compensatory](#) and [punitive](#) damages, whereas under New York State law (<http://www.nysdhr.com/hrlaw.html>), [punitive damages](#) are not available and there is no limit on [compensatory damages](#).⁸⁸

[Back to top](#)

WHAT AM I ENTITLED TO IF I WIN?

- a. [What am I entitled to if I prove my claim of sexual harassment or discrimination?](#)
- b. [What is equitable relief?](#)
- c. [What is injunctive relief?](#)
- d. [Am I entitled to monetary damages if I win?](#)
- e. [What is the difference between compensatory and punitive damages?](#)
- f. [Am I entitled to back pay?](#)
- g. [Am I entitled to “pecuniary losses”?](#)
- h. [Am I entitled to my old job back?](#)
- i. [Am I entitled to attorney’s fees?](#)
- j. [Will this be the final result?](#)

[Back to Main](#)

- a. **What am I entitled to if I prove my claim of sexual harassment or discrimination?**
A successful claim may entitle you to unlimited [compensatory damages](#), which includes any actual loss or mental or psychological injury you suffered as a result of your employer’s sex discrimination.⁸⁹

[Back to top](#)

- b. **What is equitable relief?**
[Equitable relief](#) is any non-monetary remedy that the court chooses to grant based on what it deems fair and within its powers to enforce.

[Back to top](#)

- c. **What is injunctive relief?**
[Injunctive relief](#) is a court order in your favor, directing your employer to take (or refrain from) a particular action. For example, the court can order your employer to change its discriminatory practices.

[Back to top](#)

- d. **Am I entitled to monetary damages if I win?**

Absolutely. Under New York State law (<http://www.nysdhr.com/hrlaw.html>), a winning employee is entitled to [compensatory damages](#), which can include [front pay](#) and [back pay](#). No [punitive damages](#) are allowed under New York law (<http://www.nysdhr.com/hrlaw.html>), but there is no limit to the amount of [compensatory damages](#) that may be awarded.⁹⁰

[Back to top](#)

- e. **What is the difference between compensatory and punitive damages?**

[Punitive damages](#) serve as a punishment for the employer and attempt to deter future discrimination, whereas [compensatory damages](#) serve to compensate an employee for an actual financial loss that may have occurred as a result of sex discrimination. Unfortunately, under the New York State Human Rights Law, [punitive damages](#) are not awarded for claims of sex discrimination.⁹¹

[Back to top](#)

f. Am I entitled to back pay?

New York courts have held that a successful claim of sexual harassment or sex discrimination by an employee entitles that employee to [back pay](#) when the award is “warranted and not excessive.”⁹²

[Back to top](#)

g. Am I entitled to “pecuniary losses”?

Under New York Human Rights Law (<http://www.nysdhr.com/hrlaw.html>) you are allowed to receive [compensatory damages](#) but no [punitive damages](#). There is no monetary cap on compensatory damages, and these damages may include recovery for [front pay](#), [back pay](#), and mental anguish.

[Back to top](#)

h. Am I entitled to my old job back?

If the Division finds in your favor on your claim of sex discrimination or harassment, you may be entitled to [reinstatement](#) and [back pay](#) if this is deemed an appropriate measure.⁹³

[Back to top](#)

i. Am I entitled to attorney’s fees?

The New York State Human Rights Law does not permit recovery of [attorney’s fees](#) for claims of sexual harassment or sex discrimination. However, the New York City Human Rights Law (<http://www.ci.nyc.ny.us/html/cchr/home.html>) does permit recovery for [attorney’s fees](#), as well as [punitive damages](#).⁹⁴ [LINK TO CITY LAW]

[Back to top](#)

j. Will this be the final result?

Either party that loses at decision at trial or hearing level may appeal a decision of the New York State Division of Human Rights (www.nysdhr.com) to the State Supreme Court within 60 days of the Division’s ruling.⁹⁵

[Back to top](#)

LOCAL ORDINANCES: DOES MY CITY HAVE ITS OWN LAWS ABOUT SEX DISCRIMINATION?

- a. [What are the differences between local and state law?](#)
- b. [What are the advantages and disadvantages of the local law?](#)
- c. [What is the procedure of filing a local claim?](#)

[Back to Main](#)

a. What are the differences between local and state law?

The New York State Human Rights Law and the New York City Human Rights Law (<http://www.ci.nyc.ny.us/html/cchr/home.html>) differ in the damages that can be awarded under the two statutes. Under State Law (www.nysdhr.com/hrlaw.html), [attorney's fees](#) and [punitive damages](#) are not allowed, whereas the two are allowed under the City Law (<http://www.ci.nyc.ny.us/html/cchr/home.html>). In order to file a claim under New York City Human Rights Law (<http://www.ci.nyc.ny.us/html/cchr/home.html>), the discrimination must have occurred within the City limits.⁹⁶

[Back to top](#)

b. What are the advantages and disadvantages of the local law?

The obvious disadvantage of the city law is that it is not applicable throughout the entire state, just in the city limits of New York City (<http://www.ci.nyc.ny.us/html/cchr/home.html>). The advantages are that a successful claim can result in the awarding of [punitive damages](#) to you, which can oftentimes be substantially more than [compensatory damages](#).⁹⁷

[Back to top](#)

c. What is the procedure of filing a local claim?

The process is very similar to filing with the New York State Division of Human Rights (www.nysdhr.com), although you may only file a claim with one commission, not both. By contacting either the New York State Division of Human Rights (www.nysdhr.com) [[LINK TO STATE DIVISION CONTACT INFORMATION](#)] or the New York City Commission on Human Rights (<http://www.ci.nyc.ny.us/html/cchr/home.html>), they should be able to assist you with your claim and direct you as to whether or not you should proceed under the state or city human rights law. You may contact the City Commission on Human Rights (<http://www.ci.nyc.ny.us/html/cchr/home.html>) by calling (212) 306-5070 or by visiting the Commission's Law Enforcement Bureau's office located in Lower Manhattan at:⁹⁸

40 Rector Street, 10th Floor
New York, NY 10006

[Back to top](#)

-
- ¹ N.Y. Exec. Law § 292 (McKinney 2003).
- ² N.Y. Exec. Law § 296 (McKinney 2003).
- ³ *Black's Law Dictionary* (Bryan A. Garner ed., 8th ed., West 2004).
- ⁴ U.S. Equal Employment Opportunity Commission, *Discriminatory Practices*, http://www.eeoc.gov/abouteeo/overview_practices.html (accessed March 20, 2005).
- ⁵ N.Y. Exec. Law § 292 (McKinney 2003).
- ⁶ N.Y. Exec. Law § 292 (McKinney 2003).
- ⁷ U.S. Equal Employment Opportunity Commission, *Filing a Charge of Employment Discrimination*, http://www.eeoc.gov/charge/overview_charge_filing.html (accessed March 20, 2005).
- ⁸ *Sogg v. American Airlines, Inc.*, 193 A.D.2d 153, 154 (N.Y. App. Div. 1st Dept. 1993).
- ⁹ *Funk v. F&K Supply, Inc.*, 43 F. Supp. 2d 205 (N.D.N.Y. 1999).
- ¹⁰ *State Div. of Human Rights on Complaint of Johnson v. Oneida County*, 119 A.D.2d 1006, 1007 (N.Y. App. Div. 4th Dept. 1986).
- ¹¹ 13 N.Y. Prac., New York Employment Litigation § 5:37 (West 2004).
- ¹² New York State Division of Human Rights, *How to File A Complaint*, <http://www.nysdhr.com/complaints.html> (accessed March 23, 2005).
- ¹³ *Kent v. Papert Companies, Inc.* 309 A.D.2d 234, 246 (N.Y. App. Div. 1st Dept. 2003).
- ¹⁴ United States Equal Employment Opportunity Commission, *An Overview of the EEOC and Small Businesses*, <http://www.eeoc.gov/employers/overview.html#how%20do%20I%20determine> (accessed March 30, 2005).
- ¹⁵ *Tomka v. Seiler Corp.*, 66 F. 3d 1295, 1314 (2d Cir. 1995).
- ¹⁶ New York State Division of Human Rights, *How to File A Complaint*, <http://www.nysdhr.com/complaints.html> (accessed March 20, 2005).
- ¹⁷ *Kent*, 309 A.D.2d at 246.
- ¹⁸ *Tomka*, 66 F.3d. at 1310.
- ¹⁹ N.Y. Labor Law §194 (Consol. 2005).
- ²⁰ *Lavin-McEleney v. Marist College*, 239 F.3d 476, 479 (2d Cir. 2001).
- ²¹ *Tomka*, 66 F.3d at 1310.
- ²² *Id.*
- ²³ *Belfi v. Prendergast*, 191 F. 3d 129, 135 (2d Cir. 1999).
- ²⁴ *Aldrich v. Randolph Central. School District*, 963 F.2d 520, 526 (2d Cir. 1992).
- ²⁵ *New York State Div. of Human Rights v. New York-Pennsylvania Professional Baseball League*, 36 A.D.2d. 364, 369 (N.Y. App. Div. 4th Dept. 1971).
- ²⁶ 18 N.Y. Jur. 2d Civil Rights § 31 (West 2005).
- ²⁷ *New York-Pennsylvania Professional Baseball League*, 36 A.D.2d. at 368.
- ²⁸ *Shumway v. United Parcel Service, Inc.*, 118 F.3d 60, 63 (2d. Cir. 1997).
- ²⁹ *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 153 (U.S. 2000).
- ³⁰ *State Div. of Human Rights on Complaint of Johnson*, 119 A.D.2d at 1008.
- ³¹ *Pace v. Ogden Servs. Corp.*, 257 A.D. 2d 101, 103 (N.Y. App. Div. 3rd Dept. 1999).
- ³² *Father Belle Community Ctr. v. New York State Div. of Human Rights*, 221 A.D.2d 44, 50 (N.Y. App. Div. 4th Dept. 1996).
- ³³ *Id.* at 51.
- ³⁴ *Vitale v. Rosina Food Prods.*, 283 A.D.2d 141, 143 (N.Y. App. Div. 4th Dept. 2001).
- ³⁵ *Id.*
- ³⁶ *Van Zant v. KLM Royal Dutch Airlines*, 80 F.3d 708, 715 (2d Cir. 1996).
- ³⁷ *Id.*
- ³⁸ *Id.*
- ³⁹ *Grand Union Co. v. Mercado*, 263 A.D.2d 923 (N.Y. App. Div. 3rd Dept. 1999).
- ⁴⁰ *Sardina v. Dellwood Foods, Inc.*, 1995 WL 640502 (S.D.N.Y. Nov. 4, 1995).
- ⁴¹ *See Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57 (U.S. 1986).
- ⁴² *See Levy v. City Commission on Human Rights*, 85 N.Y.2d 740 (N.Y. 1995).
- ⁴³ *Father Belle Community Ctr. v. New York State Div. of Human Rights*, 221 A.D. 2d 44, 51 (N.Y. App. Div. 1996).
- ⁴⁴ N.Y. Exec. Law § 296 (McKinney 2005).

-
- ⁴⁵ *West Hempstead Free Union School Dist. v. State Div. of Human Rights*, 116 A.D.2d 642, 643 (N.Y. App. Div. 2d Dept. 1986).
- ⁴⁶ *New York City Transit Authority v. State Division. of Human Rights*, 78 N.Y.2d 207 (N.Y. 1991).
- ⁴⁷ *Id.* at 212.
- ⁴⁸ *Javier v Netumar International, Inc.*, 58 A.D.2d 912, 913 (N.Y. App. Div. 3rd Dept. 1977).
- ⁴⁹ N.Y. Work. Comp. Law §§ 204, 205 (Consol. 2005).
- ⁵⁰ 29 U.S.C.A. §§ 2601-2654 (West 2005).
- ⁵¹ *State Div. of Human Rights v. City School Dist.*, 75 A.D.2d 1009, 1010 (N.Y. App. Div. 4th Dept. 1980).
- ⁵² N.Y. Exec. Law §§ 292, 296 (McKinney 2003).
- ⁵³ *State Div. of Human Rights v. City School Dist.*, 75 A.D.2d at 1010.
- ⁵⁴ *Hamilton v. New York City Commission on Human Rights*, 199 A.D.2d 223, 223 (N.Y. App. Div. 1st Dept. 1993).
- ⁵⁵ N.Y. Exec. Law § 296 (McKinney 2003).
- ⁵⁶ N.Y. Ins. Law § 3221 (McKinney 2004).
- ⁵⁷ *Eric H. Green & Associates v. Jennings Tolbert*, 306 A.D.2d 3 (N.Y. App. Div. 1st Dept. 2003).
- ⁵⁸ *O'Connor v. Consolidated Coin Caterers Corp.*, 517 U.S. 308, 116 S.Ct. 1307 (1996).
- ⁵⁹ *Kent*, 309 A.D.2d at 246.
- ⁶⁰ N.Y. Exec. Law § 296 (McKinney 2003).
- ⁶¹ *State Div. of Human Rights on Complaint of Johnson v. Oneida County*, 119 A.D. 2d 1006, 1007 (N.Y. App. Div. 1986).
- ⁶² *Alston v. New York City Transit Authority*, 14 F. Supp. 2d 308, 313 (S.D.N.Y. 1998).
- ⁶³ *Sogg*, 193 A.D.2d at 156.
- ⁶⁴ *See Consolidated Edison Co. of New York, Inc. v. New York Div. of Human Rights*, 77 N.Y.2d 411 (N.Y. 1991).
- ⁶⁵ *Id.* at 416.
- ⁶⁶ *Chauvancy v. Dresdner Bank AG*, 2004 WL 2375413 at *1 (N.Y. June 23, 2004).
- ⁶⁷ *Mittl v. New York State Div. of Human Rights*, 100 N.Y.2d 326, 330 (N.Y. 2003).
- ⁶⁸ *Chauvancy v. Dresdner Bank AG*, 2004 WL 2375413 *1 (N.Y. June 23, 2004).
- ⁶⁹ *Black's Law Dictionary* (Bryan A. Garner ed., 8th ed. (West 2004).
- ⁷⁰ *Sogg*, 193 A.D.2d at 156.
- ⁷¹ *Chauvancy v. Dresdner Bank AG*, 2004 WL 2375413 *1 (N.Y. June 23, 2004).
- ⁷² *Byerly v. Ithaca College*, 290 F. Supp. 2d 301, 309 (N.D.N.Y. 2003).
- ⁷³ *McPhatter v. Cribb*, 1999 U.S. App. LEXIS 34233 (2d Cir. 1999).
- ⁷⁴ *Pace*, 257 A.D.2d at 104.
- ⁷⁵ New York State Division of Human Rights, *How to File a Complaint*, <http://www.nysdhr.com/complaints.html> (accessed March 20, 2005).
- ⁷⁶ *Id.*
- ⁷⁷ *Id.*
- ⁷⁸ *Id.*
- ⁷⁹ *Id.*
- ⁸⁰ *Id.*
- ⁸¹ *Id.*
- ⁸² *Id.*
- ⁸³ N.Y. Exec. Law § 297 (McKinney 2000).
- ⁸⁴ New York State Division of Human Rights, *How to File a Complaint*, <http://www.nysdhr.com/complaints.html> (accessed March 20, 2005).
- ⁸⁵ *Van Zant v. KLM Royal Dutch Airlines*, 80 F.3d 708, 715 (2d Cir. 1996).
- ⁸⁶ N.Y. Exec. Law § 298 (McKinney 2000).
- ⁸⁷ *See Sogg*, 193 A.D.2d at 153.
- ⁸⁸ N.Y. Exec. Law § 297 (McKinney 2000).
- ⁸⁹ *Boodram v. Brooklyn Developmental Ctr.*, 2 Misc. 3d 574 (N.Y. Misc. 2003).
- ⁹⁰ N.Y. Exec. Law § 297 (McKinney 2000).
- ⁹¹ N.Y. Exec. Law § 297 (McKinney 2000).
- ⁹² *See Boodram*, 2 Misc. 3d. at 574.
- ⁹³ *See Consolidated Edison Co. of New York, Inc. v. New York Div. of Human Rights*, 77 N.Y.2d 411 (N.Y. 1991).
- ⁹⁴ *See Grullon v. South Bronx Overall Economic Dev. Corp.*, 185 Misc. 2d 645 (N.Y. Misc. 2000).

⁹⁵ New York State Division of Human Rights, *How to File a Complaint*, <http://www.nysdhr.com/complaints.html> (accessed March 20, 2005).

⁹⁶ NYC Administrative Code § 8-107 (West 2005).

⁹⁷ *Id.*

⁹⁸ New York City Commission On Human Rights, *How to File a Complaint*, <http://www.ci.nyc.ny.us/html/cchr/html/howto.html> (accessed March 20, 2005).